

**Order of the Wisconsin
Department of Workforce Development**

The Wisconsin Department of Workforce Development proposes an order to amend DWD 270.05 (1) and to create DWD 270.05 (2m), relating to an exception for child labor permits related to a public health emergency.

The statement of scope for this rule, SS 021-20, was approved by the Governor on April 16, 2020, published in register No. 772A3, on April 20, 2020, and approved by the Department of Workforce Development on May 13, 2020. This emergency rule was approved by the Governor on May 14, 2020.

Analysis Prepared by the Department of Workforce Development

Finding of Emergency

The Department seeks to revise Chapter DWD 270 to create an exception to child labor permits related to the public health emergency declared in the Governor's Executive Order # 72 to protect the state's residents from the SARS-CoV-2 virus which causes the coronavirus disease. In response to the public health emergency, on April 16, 2020, the Department of Health Services Secretary-designee issued Emergency Order # 28 (the "Safer at Home" order), directing public schools and some government offices to close. Various public schools and government offices are child labor permit locations and no on-line system for child labor permits is in place. To address worker shortages and staffing instabilities experienced by businesses while authorized labor permit offices are closed to the public during the public health emergency, the Governor issued Emergency Order #13, which created a temporary exception to the Department's rules that require child labor permits for certain minors. Emergency Order #13 specifies requirements that employers must satisfy to hire minors who are 14 and 15 years and who have not obtained child labor permits because of the public health emergency. On May 13, 2020, the Wisconsin Supreme Court declared that the Safer at Home order is invalid and unenforceable, but carved out the provision relating to public schools, which will remain closed. *See Wisconsin Legislature v. Palm*, 2020 WI 42. Therefore, there is still limited access to permit offices and the need for the temporary exception continues.

Statutes Interpreted

Sections 103.005(1) and 103.66(1), Stats.

Statutory Authority

Sections 103.005(1) and 103.66(1), Stats.

Explanation of Statutory Authority

The Department has specific and general authority to establish rules fixing reasonable classifications and hours of employment for minors under s.103.66, Stats., which sets forth the powers and duties of the Department relating to employment of minors.

For minors under 16 years of age, the Department is authorized to fix classifications, set maximum hours and days of work, identify minimum ages for hazardous employment, and to prohibit the employment of minors in employments or places prejudicial to their life, safety, health, or welfare.

Related Statutes or Rules

Sections DWD 270.05 to 270.08 establish requirements for child labor permits.

Plain Language Analysis

Currently, with specified exceptions, ch. DWD 270 prohibits employing or permitting a minor to work unless the minor first obtains a child labor permit. This rule creates a new temporary exception that applies during the period beginning on May 11, 2020, and ending on September 1, 2020. During that period, the new exception allows employers to employ minors who are 14 and 15 years old and who have not obtained child labor permits. For the exception to apply, an employer or authorized individual must sign a written intent to hire. In addition, the employer must obtain the minor's proof of age, parent or guardian consent, and a copy of the minor's social security card. The rule also requires the employer to notify the Department about the minor and, no later than October 1, 2020, file an application for a child labor permit on behalf of the minor and pay the permit fee.

Summary of, and comparison with, existing or proposed federal regulations

None. Federal law does not require work permits or age certificates for minors to be employed.

Comparison with rules in adjacent states

Michigan and Minnesota have also suspended in person issuance of child work permits as a result of the pandemic.

Summary of factual data and analytical methodologies

Emergency Order # 13, DWD 270 and relevant statutes relating to child labor permits were reviewed as part of the process for developing this proposed rule. No other data or analysis was needed.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

This rule is intended to have no negative impact on business so therefore no analysis was necessary.

Effect on small business

No negative impact on small business.

Agency contact person

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Place where comments are to be submitted and deadline for submission

E-Mail: DWDAdminRules@dwd.wisconsin.gov

Comments will be accepted until a date to be determined.

SECTION 1. DWD 270.05 (1) is amended to read:

DWD 270.05 (1) PERMITS NECESSARY FOR MINORS. Except as provided in ~~sub.~~ subs. (2) and (2m), no minor may be employed or permitted to work in any gainful occupation unless the minor first obtains from a permit officer a written permit authorizing the employment of the minor within those periods of time stated in the permit, which shall not exceed the hours prescribed by law.

SECTION 2. DWD 270.05 (2m) is created to read:

DWD 270.05 (2m) EXCEPTION FOR PUBLIC HEALTH EMERGENCY. (a) In this subsection, "minor" means a minor who is 14 or 15 years old.

(b) Child labor permits for minors are not required during the period beginning on May 11, 2020, and ending on September 1, 2020, if all of the following requirements are met:

1. The employer of a minor or an individual authorized by the employer signs a written intent to hire that specifies the job duties to be performed by the minor and the hours and time of day to be worked by the minor.

2. The employer of a minor obtains all of the following information before hiring or permitting the minor to work:

a. Proof of age, including a birth certificate, baptismal certificate, Wisconsin driver's license or identification card described in s. DWD 270.07 (1), or other evidence specified in s. DWD 270.07 (4).

b. Written consent from the minor's parent, guardian, or court-ordered foster parent consenting to the employment or a countersignature of the parent, guardian, or foster parent on the written intent to hire required under subd. 1.

c. A copy of the minor's social security card.

(c) Upon receipt of all of the information required under par. (b) 2. regarding a minor, the employer shall notify the department that the minor has commenced employment by email to workpermits@dwd.wisconsin.gov. The notification shall include all of the following:

1. Attestation that the employer has reviewed the minor's proof of age and social security information.
2. A copy of the employer's written intent to hire described in par. (b) 1.
3. The written consent from the parent, guardian, or court-ordered foster parent described in par. (b) 2. b.

(d) Employers shall file a permit application on behalf of each minor employee hired and permitted to work under this subsection and make payment for the permit fee under s. DWD 270.08 for each such minor to a work permit office designated by the department no later than October 1, 2020.

(e) Pursuant to its discretionary authority under s. 103.66, Stats., the department shall decline to take enforcement action against an employer for hiring and permitting a minor to work without a permit if the requirements under pars. (b) and (c) for that minor employee have been met for work performed during the period beginning on May 11, 2020, and ending on September 1, 2020,.

(f) An employer who fails to timely file a permit application and make payment for permit fees as required under par. (d) shall be subject to enforcement action.

SECTION 3. This emergency rule shall take effect upon publication in the official state newspaper.

Dated this _____ day of May, 2020

STATE OF WISCONSIN
DEPARTMENT OF WORKFORCE
DEVELOPMENT

Caleb Frostman, Secretary